

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION
Electronically Filed

CREE R. GREEN
55 S. Main Cross Street
Hanover, Indiana 47241

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

Serve:

Hon. Merrick Brian Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530-0001

And

Hon. John Childress
Acting United States Attorney
Southern District of Indiana
10 W Market St, Suite 2100
Indianapolis, IN 46204

COMPLAINT

Comes the plaintiff, CREE R. GREEN, by and through counsel, and for his Complaint and cause of action against the defendant, United States of America (hereinafter "USA"), states as follows:

JURISDICTION

1. This action arises under the Federal Torts Claims Act, 28 U.S.C., Sections 1346(b) and 2671-2680, and this court has original jurisdiction over the proceeding against the defendant, USA. Plaintiff suffered injuries and damages as a result of the negligence of an employee of the United States Government, while said employee was acting within the course and scope of his

employment. The USA, if a private person, would be liable to plaintiff in accordance with the laws of the through the doctrine of respondeat superior and other applicable law. The United States of America is the proper defendant pursuant to 28 U.S.C. Sections 2674 and 2679.

2. Service of Process may be perfected by serving a copy of the complaint and summons to the United States Attorney for the Southern District of Indiana and forwarding a copy of same by certified mail, return receipt requested, to the Office of the Attorney General of the United States, Hon. Merrick Brian Garland. Service is made on defendant, United States of America, pursuant to Rule 4(i)(1) of the Federal Rules of Civil Procedure.

VENUE

3. Plaintiff, Cree R. Green, is a citizen of the United States of America and an Indiana resident residing at 55 S. Main Cross Street Hanover, Indiana 47241, Jefferson County, in the Southern District of Indiana, and at all times relevant herein resided and continues to reside in said judicial district, and the acts and omissions complained of herein occurred in said judicial district. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. Section 1402(b). Venue is proper in the New Albany Division of this Court because the matter giving rise to this action occurred in Jefferson County, Indiana, which is within said division.

FACTS

4. On January 5, 2019, at approximately 10:35 a.m., Damon J. Cheesebrew was operating a motor vehicle leaving a commercial driveway on SR62W [Clifty Road], Jefferson County, Indiana, when he entered SR62W without stopping or looking and collided with a motor vehicle being operated by Jack P. Lambright, who was traveling Northbound on SR62W. At said time and place, Damon J. Cheesebrew was acting within the course and scope of her employment as a

United States Postal Carrier for the United States Postal Service. The United States Postal Service is an agency of the defendant, United States of America.

5. At said time and place Cree R. Green was a front seat passenger in the vehicle operated by Jack P. Lambright, who was traveling Northbound on SR62W, and the vehicle driven by Damon J. Cheesebrew, while acting within the course and scope of her employment as an employee of the United States Postal Service, negligently and carelessly operated the post office motor vehicle so as to cause it to collide with and strike the passenger side of the vehicle in which Cree R. Green was a passenger. Damon J. Cheesebrew failed to yield the right of way to Jack P. Lambright, failed to exercise due care to avoid colliding with the vehicle occupied by Cree R. Green, failed to keep a proper lookout ahead, failed to pay attention to the roadway in front of her, Damon J. Cheesebrew failed to operate the vehicle in a careful manner, and failed to keep control of his vehicle so as to avoid a collision.

6. Under these facts and circumstances and under the laws of the State of Indiana, the person responsible for the operation of a motor vehicle in the manner described herein, if she were a private person, would be liable to plaintiff for his damages resulting from the collision.

7. At the date and time of this collision, Defendant United. States of America, by and through its employee, agent and servant, Damon J. Cheesebrew, failed to exercise ordinary care and otherwise violated its statutory and common law duties to plaintiff as described herein, and its negligence and its negligence per se was a substantial factor in causing plaintiffs personal injuries and damages.

8. As a direct and proximate result of the negligent and careless conduct of the USA, by and through its employee, agent and servant, Damon J. Cheesebrew, and without any negligence on the part of plaintiff, the plaintiff sustained severe and permanent injuries,

impairment of bodily functions, and has been caused to incur healthcare expenses, and she will be caused to incur healthcare expenses in the future, she has suffered an increased likelihood of and susceptibility to injury and disease, she has been deprived of his enjoyment of life, she has suffered permanent injury, she has suffered pain, suffering, mental anguish and inconvenience and will be caused to endure pain and suffering and mental anguish in the future. She has suffered lost wages and her ability to work in the future has compromised due to her injuries. She has permanent scars and a collar bone that has not fully healed and full function has not been restored to the affected shoulder despite extensive medical treatment, surgery and therapy. Further, Plaintiff owned the vehicle being driven by Jack P. Lambright at the time of the collision and incurred net property damages of \$1,000.00

PROCEDURAL HISTORY

9. On October 5, 2020, the plaintiff filed her Standard Form 95 Claim for Damage Injury, or Death, with the United States Postal Service pursuant to the provisions of the Federal Torts Claims Act, 28 U.S.C., Sections 1346(b) and 2671-2680. The Postal Service acknowledged receipt of the plaintiffs claim on October 13, 2020. True and correct copies of the plaintiffs SF 95 and the Postal Service's acknowledgement are attached hereto as exhibits and incorporated herein by reference.

10. The Postal Service issued a denial of the Plaintiff's claim on July 27, 2021 and the decision is attached hereto as an exhibit and incorporated herein by reference.

11. Plaintiff has complied with all administrative requirements to assert this action, and all administrative remedies have been exhausted.

12. In compliance with 28 U.S.C. Section 2401, plaintiff brings his cause of action herein against the United. States of America more than six months after filing notice of the claim to the appropriate Federal agency and within six (6) months of the denial by the Postal Service.

WHEREFORE, plaintiff Cree R. Green demands judgment against the defendant, United States of America, as follows:

1. Compensatory damages to fairly and reasonably compensate plaintiff, not to exceed \$1,416,304.06.
2. Her costs herein incurred.
3. Interest at the maximum allowable rate.
4. Any and all other relief to which plaintiff may be entitled.

Respectfully submitted,

/s/ Dana R. Kolter

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